



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 27th day of December, 2002

Application of

**BOSTON-MAINE AIRWAYS CORP.
D/B/A PAN AM CLIPPER CONNECTION**

for an amendment to its certificate of public convenience
and necessity under 49 U.S.C. 41102

Served: December 30, 2002

Docket OST-2000-7668

**ORDER TO SHOW CAUSE
PROPOSING ISSUANCE OF AMENDED CERTIFICATE AUTHORITY**

Summary

By this order, we tentatively find that Boston-Maine Airways Corp. d/b/a Pan Am Clipper Connection ("Boston-Maine") is fit, willing, and able to provide interstate scheduled air transportation of persons, property, and mail as a certificated air carrier, using large aircraft, subject to limitations and conditions.

Background

Section 41102 of Title 49 of the United States Transportation Code ("the Transportation Code") directs us to determine whether applicants for certificate authority to provide interstate scheduled air transportation are "fit, willing, and able" to perform such transportation, and to comply with the Transportation Code and the regulations of the Department. In making fitness findings, the Department uses a three-part test that reconciles the Airline Deregulation Act's liberal entry policy with Congress' concern for operational safety and consumer protection. The three areas of inquiry that must be addressed in order to determine a company's fitness are whether the applicant (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) will have access to resources sufficient to commence operations without posing an undue risk to consumers, and (3) will comply with the Transportation Code and regulations imposed by Federal and State agencies. We must also find that the applicant is a U.S. citizen.

By Order 2000-10-1, issued October 2, 2000, the Department found Boston-Maine fit to engage in interstate scheduled passenger operations using small (60-seat or less) aircraft and issued to it a certificate for such operations. Because the Department had not found Boston-Maine fit for

operations using large aircraft (that is, aircraft with more than 60-passenger seats), the section 41102 certificate issued to the company specifically restricted it to small aircraft operations and required that, should Boston-Maine desire to conduct operations using large aircraft, it first demonstrate its fitness for such operations.

Since receiving effective certificate authority in December 2001,¹ Boston-Maine has conducted passenger operations using 19-seat Jetstream 3100s, as well as all-cargo operations using CASA 212s. It now desires to institute additional service using 141-seat B727 aircraft. As a result, on August 27, 2002, it filed an application in Docket OST-2000-7668 for an amendment to its current certificate. Boston-Maine accompanied this amendment application with the fitness information required by section 204.3 of our regulations.²

On September 19, 2002, the Air Line Pilots Association (ALPA) filed an answer opposing Boston-Maine's amendment application.³ Nonetheless, we propose to decide the issue of the applicant's fitness on the basis of the written record. Moreover, after review of these filings, together with the fitness information submitted by Boston-Maine, we tentatively conclude that Boston-Maine is a U.S. citizen and is fit, willing, and able to conduct limited large aircraft operations, in addition to its ongoing small aircraft operations. However, we will give interested persons an opportunity to show cause why we should not adopt as final the tentative findings and conclusions stated herein.

The Company

As we noted in our earlier order to show cause (*see* Order 2000-9-17), Boston-Maine was organized as a corporation under the laws of the State of New Hampshire in March 1999, and is a wholly-owned subsidiary of Pan American Airlines, Inc. (PAA),⁴ a holding company which also owns the certificated air carrier Pan American Airways Corp. (Pan Am).

Boston-Maine conducted operations as an air taxi from June 1999 until December 2001 when it commenced certificated operations. Its present operations are conducted using ten 19-passenger British Aerospace Jetstream 3100 aircraft and two CASA 212s.⁵

¹ See Order 2001-12-21, issued December 27, 2001.

² Boston-Maine filed information supplementing its application on September 9 and 26, October 21, November 7, and December 4, 2002.

³ ALPA is the collective bargaining representative of the pilots employed by Pan American Airways (Pan Am). Pan Am and Boston-Maine share common ownership. While this answer was filed late (one day after the answer period provided under our rules), ALPA accompanied its answer with a motion for leave to file late. We will grant this request. ALPA's answer and Boston-Maine's reply thereto are discussed elsewhere in this order.

⁴ PAA, itself, is owned by Mr. Timothy Mellon (94.2 percent) and Mr. David A. Fink (5.2 percent).

⁵ Boston-Maine currently conducts operations using its CASAs to provide all-cargo operations and its Jetstreams to provide interstate scheduled passenger service to the cities of Atlantic City, Baltimore, Bangor, Bedford, Cumberland, Hagerstown, Martha's Vineyard, New York (Westchester), and Portsmouth. In addition, the company has recently inaugurated scheduled transborder services between

Financial Plan and Operating Proposal

Boston-Maine has presented an operating plan which indicates that, if granted the certificate amendment it seeks, it will commence two round trips, five days per week, between St. Thomas and San Juan using a single 141-seat B727 aircraft.⁶ While the company states that it would also utilize such aircraft to perform operations in conjunction with the interstate and foreign scheduled service operations of Pan Am, it has not included a forecast for any such operations in its application.⁷

In its answer to Boston-Maine's application, ALPA states that it believes that the applicant has neither demonstrated the necessary fitness to operate an expanded service using large aircraft, nor presented a credible business plan for such an operation.

In support of its position that Boston-Maine has not demonstrated its fitness, ALPA notes that Boston-Maine has so far failed to operate successfully as a small-aircraft airline, citing Boston-Maine's significant losses thus far, and, thus, it should not be granted large aircraft authority. In addition, ALPA notes that the recent substantial reductions in Pan Am's operations raises a question of whether the parent of both Boston-Maine and Pan Am is really able to guarantee the long-term viability of either airline.

In support of its position that Boston-Maine has not presented a credible business plan for its large aircraft operations, ALPA notes that the applicant did not provide any information to show that its introduction of B727 service between San Juan and St. Thomas, an already heavily served market, would attract sufficient passengers to be successful. Further, ALPA argues that,

the U.S. and Canada (St. John, New Brunswick, and Halifax, Nova Scotia) utilizing its Jetstream aircraft pursuant to the blanket exemption authority for such operations granted by section 206.5 of our rules.

⁶ Boston-Maine states that the B727 aircraft will be leased from a related company, Guilford Transportation Industries, which is the lessor of Boston-Maine's small aircraft.

⁷ In addition, we note that Pan Am has recently implemented a significant reduction of its service. Pan Am indicates that this reduction is temporary in nature and was undertaken due to substantial traffic declines in the markets affected. Pan Am states that it is utilizing this opportunity to perform certain maintenance work and capital investments on its aircraft. Boston-Maine states that, while it is too soon to determine whether Pan Am's service reductions will have any material impact on its own operations, it does not expect its current Jetstream service to be affected. In this regard, Boston-Maine notes that it has recently started service to Canada and that these operations are proving to be profitable. Further, Boston-Maine notes that it has also recently adjusted its schedules for its operations between Baltimore (BWI) and Cumberland and Hagerstown, Maryland, in order to provide convenient connections at BWI to services operated by several other carriers. Finally, Boston-Maine notes that it is strongly committed to maintaining and expanding its Jetstream operations and that its lessor has recently formalized the acquisition of 13 additional Jetstreams for its use.

assuming this service proposal is viable, the applicant has not given any reason as to why it makes sense for Boston-Maine, rather than Pan Am, to provide the service proposed.⁸

In response to ALPA's answer, Boston-Maine states that ALPA's argument that it is unfit for upgraded authority based on the fact that it has suffered operating losses for its current operations is "ludicrous." According to the applicant, if ALPA's financial performance standard was adopted by the Department, virtually all of the current U.S. certificated air carriers would not be "fit." In addition, Boston-Maine notes that it has provided substantial evidence of its fitness for large aircraft operations. Finally, Boston-Maine notes that, while it intends to file a separate application for foreign certificate authority using large aircraft in the near future, the San Juan-St. Thomas service proposal contained in its current application accurately reflects the entirety of its interstate large aircraft operations planned for the next year.

In support of its ability to undertake its proposed St. Thomas-San Juan B727 operations, Boston-Maine has provided forecasts of its anticipated pre-operating expenses associated with the addition of large aircraft to its operating fleet, as well as a forecast of its B727 operating expenses for its first year of such operations. As noted above, ALPA asks that the Department find that Boston-Maine's operating plans are not reasonable. It bases this request on the current level of service in the San Juan-St. Thomas market and the likelihood that Boston-Maine will not be able to achieve its projected load factor and revenues. ALPA has not, however, argued that the expenses forecast by Boston-Maine for providing the service are not reasonable. Except in cases where limited entry markets are involved, it is generally not the Department's policy to determine the reasonableness of an applicant's revenue forecast. Rather, we have adopted a policy of determining whether the expenses forecast for the proposed operations are reasonable and, if so, whether the applicant will have sufficient funds available to allow it to commence the proposed operations without posing an undue risk to consumers or their funds.

⁸ In support of this argument, ALPA notes that Pan Am already serves San Juan and, as a result, already has an existing infrastructure there.

Our review of Boston-Maine's B727 pre-operating and first-year operating expense forecasts finds that they appear to be reasonable.⁹ Further, it appears that Boston-Maine has available sufficient funds to meet our financial fitness criteria.

Specifically, in evaluating an applicant's financial fitness, the Department generally asks that the company have available to it sufficient resources to cover all pre-operating costs plus a working capital reserve equal to the operating costs that would be incurred in three months of "normal" certificated operations.¹⁰ Based on its forecasts, Boston-Maine will require funding of \$1.36 million to meet this criteria. This figure is based on the remaining pre-operating expenses forecast to be incurred (\$170,000) plus one-quarter (that is, \$1.19 million) of the first-year forecast operating expenses.

While ALPA is correct that, thus far, Boston-Maine's operations have not been profitable, and, as a result of its losses, Boston-Maine had negative retained earnings of \$4.0 million through September 30, 2002, the carrier is nonetheless in relatively good financial health overall. Specifically, Boston-Maine's balance sheet as of September 30, 2002, reflects current assets of \$960,090 and current liabilities of \$318,020, giving the company positive working capital of \$642,070 and a current assets to current liabilities ratio of 3.02:1. In addition, the company has other assets totaling \$2.45 million, no long-term liabilities, and positive stockholders' equity of \$3.09 million. Further, the company has recently received a cash infusion of \$750,000 from PAA to help cover the expenses associated with the proposed B727 operations.¹¹ Thus, in total, it appears that Boston-Maine has approximately \$1.39 million available to support its planned large aircraft operations.¹²

⁹ Boston-Maine has forecast that its total pre-operating expenses for its proposed large aircraft operations will be approximately \$707,000, of which all but \$170,000 have already been incurred and paid. In addition, the applicant anticipates that it will incur approximately \$4.76 million in operating expenses during its first full year of B727 operations.

¹⁰ Because projected expenses during the first several months of actual air transportation operations frequently do not include all costs of operations that will be incurred during a normal period of operations, it is our practice to base our three-month test on one quarter of the first year's operating cost forecast. In calculating available resources, projected revenues may not be used.

¹¹ Verification of this deposit has been provided. This cash infusion occurred in October 2002, and therefore these funds were not reflected in the applicant's September 20, 2002, balance sheet.

¹² Based on the company's September 30, 2002, working capital position of \$642,070, combined with the \$750,000 cash infusion.

In light of the foregoing, we tentatively conclude that Boston-Maine will have sufficient financial resources available to it to enable it to commence its proposed limited large aircraft operations without posing an undue risk to consumers or their funds.¹³

Managerial Competence

Boston-Maine's management and key technical personnel team is comprised of the following individuals:

Mr. Timothy Mellon--Chairman
 Mr. David A. Fink--President
 Mr. John R. Nadolny--Sr. Vice President, General Counsel, and Secretary
 Mr. Gordon R. Long--Vice President, General Manager, and Director of Operations
 Mr. Stewart J. Beck--Chief Inspector
 Mr. Timothy J. Donovan--Director of Maintenance
 Mr. Christopher S. Chapman--Chief Pilot
 Mr. Edwin MacNeil--Director of Safety
 Mr. Craig L. Jolliffee--Manager of Flight Operations
 Mr. Burnell W. Bailey--B727 Fleet Manager

With the exception of Messrs. MacNeil, Jolliffee, and Bailey, the experience and background of each of these individuals has previously been reviewed by the Department (*see* Orders 2000-9-17 and 2001-12-21).

Mr. MacNeil enlisted in the United States Air Force in 1956. After attending Officer Candidate School, he became an Air Force pilot in 1964 and remained on active duty until 1984, during which time he held various positions including serving for five years as Chief, Safety Division for the 509th Bombardment Wing and for three years as Safety Program Manager for the 45th Air Division. While in the Air Force, Mr. MacNeil, as a volunteer, developed and managed major refugee resettlement programs. Upon leaving the Air Force in 1984, Mr. MacNeil continued his volunteer work while serving for four years as an Adjunct Professor (Aviation Safety) at Hawthorne College; for six years as a Field Officer with the Episcopal Church in New York; and for four years as the New Hampshire State Refugee Coordinator. In addition, throughout much of this time, Mr. MacNeil was also self-employed as an aviation safety consultant and flight instructor. Finally, from 1998 until joining Boston-Maine earlier this year, Mr. MacNeil was self-employed as an immigration counselor.

¹³ Prior to receiving effective certificate authority for the large aircraft operations at issue, Boston-Maine will need to submit up-to-date financial information, including independent third-party verification of its funds then on deposit. If this updated information does not demonstrate that Boston-Maine continues to have available sufficient funds to meet our financial fitness criteria, we will take action to stay the effectiveness of the large aircraft authority awarded.

Boston-Maine stated that it hired Mr. Jolliffee and Mr. Bailey as its Manager of Flight Operations and B727 Fleet Manager, respectively, to ensure that its proposed B727 operations will have adequate management oversight.¹⁴

Mr. Jolliffee, an Airline Transport Pilot, joined Boston-Maine as a Jetstream Captain in May 2002, and was recently promoted to the position of Manager of Flight Operations. Prior to his employment with the applicant, Mr. Jolliffee worked for a variety of carriers, including several using large jet aircraft,¹⁵ for approximately 30 years. During this time, he flew a total of 18,900 hours, of which approximately 3,000 hours were logged as pilot-in-command of B727 aircraft, and an additional 7,600 hours were logged as pilot-in-command of other large aircraft.

Prior to being hired as Boston-Maine's B727 Fleet Manager, Mr. Bailey was an employee of its sister company, Pan Am, having joined that company in 1998. At Pan Am, Mr. Bailey held positions as Industrial Safety and Environmental Specialist (1998-1999), Director of Training (1999-2000), and as a pilot (2000-2002). Prior to his employment with Pan Am, Mr. Bailey served 22 years as a pilot in the U.S. Air Force and approximately two years as an environmental/safety specialist with Hewlett Packard and Sylvania.

In its answer to the application, ALPA argues that Boston-Maine does not possess competent management. This lack of managerial competence is evident, according to ALPA, based on Boston-Maine's failure to achieve profits on its current operations, and in Boston-Maine's decision to undertake large aircraft operations that could be performed by its sister company, Pan Am, without incurring significant pre-operating costs. ALPA states that Boston-Maine's "dismal record to date precludes a finding that it has the necessary managerial skills to operate an expanded airline using large aircraft."

While Boston-Maine has indeed been unprofitable to date, as we noted in the preceding Financial section, its overall health remains adequate. Further, such losses do not necessarily indicate inadequate or incompetent management. While we agree that Pan Am could institute the San Juan-St. Thomas operations proposed by Boston-Maine without incurring the same level of pre-operating expenses, it is not our practice to second guess a carrier's owners in their determination of what service should be offered to the traveling public. This is true whether the owners own a single carrier or multiple carriers. Moreover, were we to find that Boston-Maine's management was unfit due to this decision, we would have no choice but to also find Pan Am's management unfit given that both carriers share the same ownership and senior management (Chairman, Chief Executive Officer, and Sr. Vice President and General Counsel).

We are, however, concerned that Boston-Maine's team of key technical personnel has little experience in overseeing large aircraft operations of the type proposed. While Boston-Maine has

¹⁴ Mr. Gordon Long, Boston-Maine's General Manager and Director of Operations lacks large aircraft experience. As a result, Boston-Maine has taken steps to add management team members who have experience in B727 operations.

¹⁵ Among the carriers using large aircraft for which Mr. Jolliffee served as a pilot were Emery Worldwide Airlines, International Cargo Express, TransOcean, United, Ryan International, and Braniff International Airways.

added two positions (Manager of Flight Operations and B727 Fleet Manager) specifically to provide stronger oversight of the proposed large aircraft operations, the individuals selected to fill these positions (Mr. Jolliffee and Mr. Bailey) lack strong management experience in such operations.¹⁶ Nonetheless, the FAA has advised us that Boston-Maine's key technical team as a whole is likely to be sufficient for the single B727 operations proposed.¹⁷

In light of this, we tentatively conclude that Boston-Maine's management team, as a whole, will possess sufficient experience to ensure that its limited B727 operations are properly overseen.

However, should the carrier expand its large aircraft operations, concerns over the strength of this team might arise. Therefore, we propose to restrict Boston-Maine's initial B727 operations to the single aircraft proposed in its application. Should Boston-Maine wish to add additional large aircraft to its operations at some later date, it would first need to have its fitness for such operations determined.¹⁸

Compliance Disposition

We also tentatively conclude that Boston-Maine has the proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel conform to applicable safety standards and that acceptable consumer relations practices will be followed.

Boston-Maine states that there are no actions or outstanding judgments against it, its owners, or its key personnel, nor have there been any charges of unfair, deceptive or anti-competitive business practices, or of fraud, felony or antitrust violations brought against any of these parties in the past ten years. The applicant also states that there are no pending investigations, enforcement actions, or formal complaints filed by the Department against it, its key personnel, or persons having a substantial interest in it with respect to compliance with the Transportation Code or the Department's regulations. In addition, Boston-Maine notes that it has not been involved in any accidents or incidents during the past year.

In its answer to the application, ALPA does not argue that Boston-Maine lacks a satisfactory compliance disposition. However, it does note that other companies that share common ownership with Pan Am and Boston-Maine have previously been found to have engaged in violations of the Railway Labor Act and argues that it believes that the real purpose of the instant

¹⁶ While Mr. Jolliffee has had significant experience as a pilot of large aircraft, he lacks management experience, having served throughout his career principally as a pilot. While Mr. Bailey has significant military flight experience, he has little management experience or other experience with B727 operations.

¹⁷ Before authorizing a carrier to conduct air transportation operations, the FAA also evaluates certain of the applicant's key personnel with respect to the minimum qualifications for those positions as prescribed in the Federal Aviation Regulations. The FAA's evaluation of these key personnel provides an added practical and in-person test of the skills and technical ability of these individuals. Should the FAA ultimately decide that any member of the key technical team presented to us is not, for whatever reason, satisfactory to it, Boston-Maine would need to undertake the changes required by the FAA and report such changes to us prior to having its certificate made effective for large aircraft operations.

¹⁸ In the context of such a review, we would also evaluate Boston-Maine's financial fitness to conduct expanded operations.

application is to allow similar practices to occur with respect to Pan Am through the shifting of most or all of the operations currently being performed by Pan Am to Boston-Maine.

In response, Boston-Maine simply states that ALPA's answer to its application is motivated by a complaint arising out of a perceived future labor dispute (between ALPA and Pan Am) and, as such, is filed at the wrong time, in the wrong forum, and against the wrong party.

While we do not dispute that ALPA may have a future claim against Pan Am if its owners shift its operations to Boston-Maine in such a manner as to violate the Railway Labor Act, we can not find that Boston-Maine lacks a satisfactory compliance disposition at this time based on ALPA's speculations. However, should the owners of Boston-Maine and Pan Am later engage in the behavior anticipated by ALPA and such behavior is determined by the courts to constitute a violation of the Railway Labor Act, ALPA could request that we review the continuing fitness of the parties involved.

During the course of our review of this application, we became aware that Boston-Maine's current operations were being held out to the traveling public as if they were flights performed by its sister company, Pan Am. Specifically, all of Boston-Maine's operations were offered under Pan Am's "PN" code (Boston-Maine had no code of its own at the time), but without appropriate notice that the flights at issue were actually Boston-Maine flights. Further, while Boston-Maine was authorized by the Department to hold itself out under the trade name "Pan Am Clipper Connection," it was not authorized to hold itself out under the name "Pan Am."

Upon being notified by the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) that it appeared to be engaging in an unfair and deceptive practice in violation of 49 U.S.C. 41712, Boston-Maine immediately took steps to correct its marketing and reservations programs. Specifically, Boston-Maine applied for, and obtained, its own two-letter IATA designator code (E9) and took steps to apply this code to all of its schedule listings.¹⁹ In addition, it revised its web-site and that of Pan Am to differentiate its flights from those offered and performed by Pan Am.²⁰ It also made revisions in the shared reservations phone system to clearly advise potential passengers which carrier's service was involved in the transportation being requested. Finally, Boston-Maine notes that it will issue any tickets on its own ticket stock, and in all other respects (such as advertising, press releases, airport signage, aircraft livery, and the uniforms worn by station and on-board personnel) will clearly differentiate between Pan Am and Boston-Maine, and clearly indicate to the traveling public that the two carriers, while affiliated, are separate and independent. The Enforcement Office advises us that it is currently investigating the matter with the full cooperation of Boston-Maine and it does not object to the issuance of this order.

¹⁹ This includes now showing service involving connections to/from Pan Am as interline connections, rather than as a one-stop flight jointly operated by Pan Am and Boston-Maine.

²⁰ Boston-Maine notes that it is continuing to implement changes to its shared on-line reservations system so that, by December 31, 2002, each leg of transportation involving connecting service with Pan Am will be identified by the carrier involved.

In addition, the FAA has advised us that Boston-Maine has applied for authorization to operate B727 aircraft under its Part 121 Air Carrier Certificate and that it knows of no reason why we should act unfavorably on the company's certificate amendment application.

CITIZENSHIP

Section 41102 of the Transportation Code requires that certificates to engage in air transportation be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section requires that the president and two-thirds of the Board of Directors and other managing officers be U.S. citizens and that at least 75 percent of the outstanding voting stock be owned by U.S. citizens. We have also interpreted the Transportation Code to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

Boston-Maine is wholly owned by PAA, which, itself, is majority owned by Mr. Timothy Mellon and Mr. David A. Fink, both U.S. citizens. We have previously found Boston-Maine, as well as its sister company, Pan Am, to be U.S. citizens under this same ownership and control.²¹ Further, our review of Boston-Maine's citizenship in conjunction with its current application has not uncovered any reason to suggest that control of Boston-Maine no longer rests with U.S. citizens.

Based on the above, we tentatively conclude that Boston-Maine remains a citizen of the United States and is fit, willing, and able to conduct the interstate scheduled passenger operations using large aircraft proposed in its amendment application.

OBJECTIONS

We will give interested persons 14 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers to objections will be due within 7 days thereafter. We expect such persons to direct their objections, if any, to the application and points at issue and to support such objections with detailed economic analyses. If an oral evidentiary hearing or discovery procedures are requested, the objector should state in detail why such a hearing or discovery is considered necessary, and what material issues of decisional fact the objector would expect to establish through a hearing or discovery that cannot be established in written pleadings. The objector should consider whether discovery procedures alone would be sufficient to resolve material issues of decisional fact. If so, the type of procedure should be specified (*See* Part 302, Rules 19 and 20); if not, the reasons why not should be explained. We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to Boston-Maine's fitness and the requested certificate amendment.

CERTIFICATE CONDITIONS & LIMITATIONS

²¹ *See* Orders 2000-10-1 (Boston-Maine) and 99-8-15 (Pan Am).

If Boston-Maine is found fit and issued the amended certificate it seeks, its authority to operate large aircraft under this certificate will not become effective until the company has fulfilled all requirements for effectiveness as set forth in the terms and conditions attached to its amended certificate. Among other things, this includes our receipt of evidence that Boston-Maine has been certified by the FAA to engage in the subject operations, and that Boston-Maine continues to have available sufficient funds to meet our financial fitness criteria.

Our tentative findings stated above are based on the large aircraft operating plan described in Boston-Maine's application, which proposes the use a single B727 aircraft during the first year of large aircraft operations. These findings might no longer apply if the company were to substantially change the scope of its operations through the introduction of additional large aircraft.²² Therefore, once Boston-Maine's certificate has been made effective for large aircraft operations, should the company propose to acquire any additional large aircraft, it must notify the Department in writing at least 45 days in advance and demonstrate its fitness for such operations prior to implementing service with any such additional aircraft.^{23 24}

Furthermore, we remind the company of the requirements of 49 U.S.C. 41110(e). Specifically, that section requires that, once a carrier is found fit initially, it must remain fit in order to hold its authority. Thus, should Boston-Maine propose other substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.²⁵ The compliance of the company with this requirement is essential if we are to carry out our responsibilities under the Transportation Code.²⁶

²² Section 298.2(h) of our rules defines large aircraft as any aircraft designed to have a maximum capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds.

²³ This limitation does not in any way limit the number of small aircraft Boston-Maine may utilize in performing its operations. Section 298.2(u) defines small aircraft as any aircraft that is not a large aircraft.

²⁴ Boston-Maine has stated that it would have no objection to our imposition of the large aircraft limitation provided that this limitation would permit it to use a second B727 aircraft as needed as a maintenance spare and that the company would remain free to apply for authority to operate additional large aircraft in interstate service during the first year of service should circumstances warrant. Further, Boston-Maine asked that any such limitation not preclude it from applying for, and being granted, authority to operate additional large aircraft in foreign air transportation. As we have advised Boston-Maine, the limitation being imposed applies to all of its services, whether interstate or foreign, and would not authorize it to operate a second large aircraft, even on a temporary basis, without a redetermination of its fitness. However, as with all cases where we impose a limit on the number of aircraft authorized, the affected carrier is free, at any time, to seek a change in the number of aircraft authorized. In such cases, when the carrier adequately demonstrates its fitness for operations with additional aircraft, we will grant the carrier's request. Our imposition of the aircraft limitation in no way prejudices the carrier's future fitness for operations using additional large aircraft.

²⁵ The carrier may contact our Air Carrier Fitness Division to report proposed substantial changes in its operations, ownership, or management, and to determine what additional information, if any, will be required under section 204.5. In addition, by notice dated July 21, 1998, the Department requested air carriers to provide a 30-day advance notification of any proposed change in ownership, restructuring, or recapitalization. If the carrier fails to file this updated information or if the information fails to demonstrate that the carrier will continue to be fit upon implementation of the substantial change, the

Finally, to aid the Department in monitoring the fitness of new carriers, we have adopted a requirement that all newly certificated carriers must submit a detailed progress report, within 45 days following the end of the first year of certificated operations, to the Air Carrier Fitness Division. This reporting requirement has already been imposed on Boston-Maine as a result of its commencement of certificated operations using small aircraft in December 2001. At present, Boston-Maine's first year progress report is due in February 2003. However, because a review of Boston-Maine's fitness has been conducted in conjunction with the subject certificate amendment, we believe that the period covered by the progress report should be revised in order to cover a year of the company's operations using both small and large aircraft. Therefore, we instruct Boston-Maine to provide the required progress report within 45 days following the end of its first year of operations using the large aircraft at issue. This report should include a description of the carrier's current operations (number and type of aircraft, principal markets served, total number of full-time and part-time employees), a summary of how these operations have changed during the year, a discussion of any changes it anticipates from its current operations during its next year of operations, current financial statements,²⁷ and a listing of current senior management and key technical personnel. The carrier should also be prepared to meet with staff members of the Fitness Division to discuss its current and future operations.

Department may take such action as is appropriate, including enforcement action or steps to modify, suspend, or revoke the carrier's certificate authority.

²⁶ We also remind Boston-Maine about the requirements of section 204.7 of our rules. This section provides, among other things, that (1) if the company ceases all operations for which it was found fit, it may not resume certificated operations unless its fitness has been redetermined, and (2) if the company does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

²⁷ These financial statements should include a balance sheet as of the end of the company's first full year of actual flight operations using large aircraft and a twelve-month income statement ending that same date.

ACCORDINGLY,

1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above and awarding an amended certificate to Boston-Maine Airways Corp. d/b/a Pan Am Clipper Connection authorizing it to engage in interstate scheduled air transportation of persons, property, and mail, using large aircraft, subject to the attached specimen Terms, Conditions, and Limitations.
2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or the amended certificate award set forth here to file them with Department of Transportation Dockets, 400 Seventh Street, SW, Washington, D.C. 20590, in Docket OST-2000-7668, and serve them upon all persons listed in Attachment A no later than 14 days after the service date of this order; answers to objections shall be filed no later than 7 days thereafter.
3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.²⁸
4. In the event that no objections are filed, we will consider all further procedural steps to be waived and we will enter an order making final our tentative findings and conclusions.
5. We grant the motion of the Air Line Pilots Association, filed September 19, 2002, for leave to file an answer out of time.
6. We will serve a copy of this order on the persons listed in Attachment A.

²⁸ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

7. We will publish a summary of this order in the Federal Register.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
<http://dms.dot.gov>*



SPECIMEN
Terms, Conditions, and Limitations

BOSTON-MAINE AIRWAYS CORP.
d/b/a PAN AM CLIPPER CONNECTION

is authorized to engage in interstate air transportation of persons, property, and mail between any point in any State, territory, or possession of the United States or the District of Columbia, and any other point in any of those entities.

This authority is subject to the following provisions:

(1) The authority to operate small aircraft under this certificate became effective on December 19, 2001.

(2) The authority to operate large aircraft under this certificate will not become effective until six (business) days after the Department has received the following documents; provided, however, that the Department may stay the effectiveness of this authority at any time prior to that date:

(a) A copy of the holder's amended Operations Specifications authorizing such operations from the Federal Aviation Administration (FAA).

(b) A certificate of insurance on OST Form 6410 evidencing liability insurance coverage meeting the requirements of 14 CFR 205.5(b) for all of its aircraft.

(c) A statement of any changes the holder has undergone in its ownership, key personnel, operating plans, financial posture, or compliance history, since the date of the Show Cause Order in this case.

(d) A revised list of pre-operating expenses already paid and those remaining to be paid, as well as independent verification that the holder has available to it funds sufficient to cover any remaining pre-operating expenses and to provide a working capital reserve equal to the operating costs that would be incurred in three months of operations.

(3) Pending receipt of effective authority, the holder may not accept payment of any kind (i.e., cash, check, or credit card) or issue tickets for the large aircraft operations proposed under this certificate, and any advertisement or listing of such flights by the holder must prominently state: "This service is subject to receipt of government operating authority."

(4) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such

other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.

(5) The holder's authority is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA), and comply with all Department of Transportation requirements concerning security.

(6) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).

(7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.

(8) The holder is authorized to conduct charter flights in interstate and/or foreign air transportation in accordance with the provisions of 14 CFR 212.

(9) The holder may reduce or terminate service at any point or between any two points, subject to compliance with the provisions of 49 U.S.C. 41734 and all orders and regulations issued by the Department of Transportation under that section.

(10) The holder may not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, except within the limits set forth in section 29 of the International Air Transportation Competition Act of 1979, as amended by section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998.

(11) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(l)), it must first comply with the requirements of 14 CFR 204.5.

(12) In the event that the holder ceases all operations for which it was found "fit, willing, and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume certificated operations within one year of its cessation, its authority shall be revoked for dormancy.

SERVICE LIST FOR BOSTON-MAINE AIRWAYS CORP.

Attachment A

MR NATHANIEL P BREED
ZUCKERT SCOUTT &
RASENBERGER
888 17TH ST NW STE 700
WASHINGTON DC 20006-3309

MR PETER J LYNCH AGC-300
FAA ASST CHIEF COUNSEL FOR
ENFORCEMENT
800 INDEPENDENCE AVE SW
WASHINGTON DC 20591

MR ALLEN MUTEN
AST TREASURER STE 800
AIRLINES REPORTING CORP
1530 WILSON BLVD
ARLINGTON VA 22209

MR JOHN R NADOLNY
SR VP & GENERAL COUNSEL
BOSTON-MAINE AIRWAYS
PEASE INTL TRADEPORT
14 AVIATION AVE
PORTSMOUTH NH 03801

MR J D MEALOR
AIRLINE DATA COORDINATOR
INNOVATA LLC
3915 OLD MUNDY MILL ROAD
OAKWOOD GA 30566-3410

AM ASSOC OF AIRPORT
EXECUTIVES
601 MADISON ST SUITE 400
ALEXANDRIA VA 22314-1756

MGR FLIGHT STANDARDS DIV
FAA ANE-200
NEW ENGLAND REGION HDQ
12 NEW ENGLAND EXEC PARK
BURLINGTON MA 01803

MR DON BRIGHT K-25
OFFICE OF AIRLINE INFO
DEPT OF TRANSPORTATION
400 SEVENTH ST SW
WASHINGTON DC 20590

MR JERRY ANKER
MR RUSSELL BAILEY
AIR LINE PILOTS ASSOC
1625 MASSACHUSETTS AVE NW
WASHINGTON DC 20036

REGIONAL COUNSEL
FAA ANE-7
NEW ENGLAND REGION HDQ
12 NEW ENGLAND EXEC PARK
BURLINGTON MA 01803

MS JONI MOUNT
PRODUCT MANAGER
TRANSPORT PRINT PRODUCTS
OFFICIAL AIRLINE GUIDES
2000 CLEARWATER DR
OAK BROOK IL 60521

MANAGER
FAA FSDO-05
PORTLAND INT'L JETPORT
2 AL MCKAY AVE
PORTLAND ME 04102

MR RICHARD DUTTON AFS-900
ASST MGR CSET
FEDERAL AVIATION ADMIN
45005 AVIATION DR STE 203B
DULLES VA 20166-7537

MR JIM ZAMMAR
DIR OF REV ACCOUNTING
AIR TRANSPORT ASSOC
STE 1100
1301 PENNSYLVANIA AVE NW
WASHINGTON DC 20004